

1977

# The State of Utah v. Archie Casias : Brief of Appellant

Utah Supreme Court

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Stephen R. McCaughey; Salt Lake Legal Defender Association; Attorney for Appellant.

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## Recommended Citation

Brief of Appellant, *Utah v. Casias*, No. 197714559.00 (Utah Supreme Court, 1977).  
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IN THE SUPREME COURT OF THE STATE OF UTAH

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THE STATE OF UTAH, :  
Plaintiff-Respondent :  
v. :  
ARCHIE CASIAS, : Case No. 14559  
Defendant-Appellant :

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BRIEF OF APPELLANT

Appeal from a conviction for Distribution of a Controlled Substance for Value in the Third Judicial District Court, in and for Salt Lake County, State of Utah, before the Honorable Peter F. Leary, presiding.

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FILED

MAY 16 1977

Clerk, Supreme Court, Utah

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## CASES CITED

Anders v. California \_\_\_\_\_ U.S. \_\_\_\_\_ (     )

IN THE SUPREME COURT OF THE STATE OF UTAH

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THE STATE OF UTAH,	:	
	:	
Plaintiff	:	
	:	
v.	:	
	:	
ARCHIE CASIAS,	:	Case No. 14559
	:	
Defendant	:	

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BRIEF OF APPELLANT

STATEMENT OF THE NATURE OF THE CASE

This is a criminal proceeding wherein the defendant, Archie Casias was charged with the crime of Distribution of a Controlled Substance for Value, to-wit: Marijuana, by an information filed in the Third Judicial District Court of Salt Lake County, State of Utah.

DISPOSITION IN THE LOWER COURT

Defendant was charged with three offenses of Distribution for Value of a Controlled Substance on three different dates in Criminal Information Numbers 28327, 28328, and 28329. On October 16, 1975 defendant was tried by the Honorable Peter F. Leary, sitting with a jury on information number 28329. Defendant was found guilty. A motion for a new trial was filed, citing various grounds, and which was granted.

On the 20th of November, 1975, defendant was tried by the Honorable Peter F. Leary sitting without a jury on information number 28328. The alleged date in 28328 was May 27, 1975. 28327 and 28329 were alleged to have occurred on subsequent dates. At the conclusion of the trial on 28328, the defendant's counsel made arguments to the court concerning the two defenses, relied on, there being agency and entrapment. At the end of the argument both the State and the defendant stipulated that the other two cases were identical factual situations and that the same legal defenses would be argued, i.e. entrapment and agency. The Court had heard the facts in two of the three cases and the third case was submitted to the Court on the above stipulation. The Court found the defendant not guilty in case number 28329 and 28327; the latter sales, and guilty on 27328, the first sale and the case heard by him without a jury.

#### RELIEF SOUGHT ON APPEAL

Defendant seeks a reversal of his conviction and a finding of not guilty.

#### STATEMENT OF FACTS

On May 27, 1975, defendant was hitchhiking a ride on State Street in Salt Lake City, Utah and was picked up by Edward Lyman,

an undercover narcotics officer. Lyman's duty was to make undercover buys of drugs. The two drove approximately 30 blocks, during which the conversation turned to drugs and Lyman asked defendant if he could get him a bag of marijuana. The defendant said he would try and he had Lyman drive him to a location on the West side of Salt Lake. The defendant took Lyman's ten dollars, went inside and came out with a bag of marijuana. He showed it to Lyman and after Lyman said it was o.k., Casias took the money back inside. Lyman testified on cross-examination that ten dollars was the going rate for a bag of marijuana. Lyman then dropped Casias off at a house in Salt Lake City.

#### STATEMENT OF COUNSEL

I, Stephen R. McCaughey, represent to this Court that I was the trial attorney for the defendant and have read the transcript herein. I would represent that I do not believe the defendant has any meritorious issues to raise on appeal and that the appeal is frivolous

The defendant, having waived the jury, took the stand and admitted the sale of a controlled substance. The defense asserted was twofold agency and entrapment. The Court made a determination in this case that it was convinced by the evidence beyond a reasonable doubt that the defendant was neither entrapped nor an agent of the buyer.

I have set forth below the possible points that could be argued on appeal and request leave to withdraw as counsel.

## ARGUMENT

1. That the evidence presented at trial showed that as a matter of law defendant was entrapped into committing the offense and therefore the conviction should be reversed.

2. That the evidence presented at trial showed that as a matter of law defendant was an agent of the buyer and therefore not guilty of the offense.

3. That since he was found not guilty of the latter sales by the same Court, that Court could not find him guilty of the first sale.

## CONCLUSION

Pursuant to the requirements set forth in Anders v. California \_\_\_\_\_, U.S. \_\_\_\_\_ ( ) defendant's attorney has read the record and set forth any possible points to be argued in defendant's favor on appeal. Having done so, and having the belief that the appeal is frivolous, respectfully requests leave to withdraw.

Respectfully submitted,

STEPHEN R. McCAUGHEY  
Attorney for Appellant